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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101



NOV 04 1988

REPLY TO
ATTN OF: SO-125

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stanford J. Nudelman
S.J. Nudelman and Son, Inc.
2707 N.W. Nela Street
Portland, Oregon 97210

Re: Toxic Substances Control Act
Docket No. 1088-09-33-2615


Dear Mr. Nudelman:

Enclosed you will find a Complaint and Notice of Opportunity for Hearing. A copy of the regulations and Rules of Practice applicable to this proceeding are also enclosed. You are hereby advised to read this document carefully and communicate your answer within the time limit specified.

The Complaint alleges that your company, S.J. Nudelman and Son, Inc., violated the disposal, storage, marking, and recordkeeping provisions of the PCB Regulations issued pursuant to the Toxic Substances Control Act. Accordingly, it is of considerable importance that you attend to this matter forthwith.

You are allowed twenty (20) days to formally answer the complaint unless you request and receive a written extension of time. However, we would like to informally discuss the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a formal answer unnecessary.

Deborah Hilsman, Attorney, is knowledgeable about this subject and can be reached at (206) 442-1810.

Sincerely,

Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: John A. Foley, EPA Headquarters

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 10, 1200 Sixth Avenue, SO-125
Seattle, Washington 98101

THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

vs.

S.J. NUDELMAN AND SON, INC.,

Respondent.

NO.1088-09-33-2615

NOTICE OF LEGAL PROCEEDINGS;
NOTICE OF EPA COMPLAINT; AND
NOTICE OF OPPORTUNITY FOR
HEARING, AND FOR SETTLEMENT
MEETING

THE REGIONAL ADMINISTRATOR EPA REGION 10 TO THE FOLLOWING RESPONDENT:

S.J. Nudelman and Son, Inc.

2707 N.W. Nela Street

Portland, Oregon 97210

YOU ARE HEREBY GIVEN NOTICE AS FOLLOWS:

1. Administrative proceedings have been commenced against you by the U.S. Environmental Protection Agency ("EPA").
2. You are hereby NOTIFIED of, and served with, the ATTACHED TRUE COPY of a COMPLAINT filed in these proceedings. It explains EPA's claims for civil penalties proposed to be adjudged against you.
3. The signed original of the attached COMPLAINT is filed with the EPA Regional Hearing Clerk, SO-125, Park Place Bldg., 1200 Sixth Avenue, Seattle, King County, Washington, 98101, Phone No. (206) 442-1141.
4. The ATTACHED COMPLAINT is a claim by EPA for civil penalties to be assessed against you. Adjudicative proceedings to that end are controlled by the "Consolidated Rules of Practice" (copy attached to the Complaint) appearing in Title 40, Code of Federal Regulations, Part 22.
5. You have a RIGHT TO A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE:
 - A. To contest any material allegation of the attached penalty COMPLAINT which you genuinely deny; and/or
 - B. To contest the amount and appropriateness of the civil penalties proposed in the COMPLAINT.

However, TO OBTAIN A HEARING YOU MUST FILE A WRITTEN RESPONSE to the COMPLAINT called an "Answer."

6. YOU HAVE ONLY TWENTY (20) CALENDAR DAYS (if you choose to respond) from the day you receive this Notice within which to file a WRITTEN RESPONSE to the attached COMPLAINT. Such a written response or "Answer" must be filed by having it DELIVERED ON TIME to the EPA Hearing Clerk (address in paragraph 3). Copies of all papers filed by you must be delivered at the same time (by mail or otherwise) to the EPA attorney whose name appears below in paragraph 10.

7. ANY SUCH WRITTEN RESPONSE YOU FILE TO THE COMPLAINT MUST:

- A. Request a hearing on the Complaint (or your right to request a hearing on the Complaint is deemed waived); and
- B. Contain clear and direct admissions, denials, and/or explanations with respect to each of the allegations of the Complaint; and
- C. Contain a definite statement of any facts which you contend constitute grounds for defense against the penalty liability stated in the Complaint; and
- D. Contain a concise statement of all material facts relating to allegations in the Complaint which you intend to place in issue at a hearing.

8. IF YOU FILE A LATE WRITTEN RESPONSE, OR IF YOU OMIT ENTIRELY FILING ANY WRITTEN RESPONSE, YOU ARE SUBJECT TO THE ENTRY OF AN ORDER OF DEFAULT on the Complaint. After an order of default, penalties can be adjudged and imposed on you without any further notice to you.

9. AN INFORMAL SETTLEMENT MEETING can be held at your request. You may discuss there:

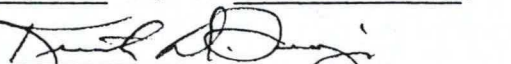
- A. Whether or not the violations alleged truly occurred; and/or
- B. The amount and appropriateness of any civil penalty considering: the size of your business, the gravity of any such violations, the effect of civil penalties on your ability to continue in business, and any other appropriate factors.

Such a meeting might resolve matters by a settlement which would make a hearing unnecessary.

10. In order to arrange an informal settlement meeting you must contact Deborah Hilsman, EPA attorney, at (206) 442-1810, 1200 Sixth Avenue, M/S S0-125, Seattle, Washington 98101, not later than twenty (20) calendar days from receipt hereof.

11. PLEASE TAKE NOTICE that an EXTENSION OF TIME to make and file your written response may be negotiated with the EPA attorney named above. If an agreement is reached to extend time, a written stipulation and an agreed order will be entered in accordance with 40 C.F.R. §22.16(c).

ISSUED AT SEATTLE this 4th day of November, 1988.



KENNETH D. FEIGNER, Chief
Pesticides and Toxic Substances Branch

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8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
9 BEFORE THE REGIONAL ADMINISTRATOR
10 Region 10
Seattle, Washington

11 In the Matter of:) DOCKET NO. 1088-09-33-2615
12 S.J. Nudelman and Son, Inc.,)
13 Respondent.) COMPLAINT
_____)

14 I.

15 JURISDICTION
16

17 1. This is an administrative action instituted pursuant to
18 Section 16(a) of the Toxic Substances Control Act (hereinafter "TSCA"),
19 15 U.S.C. § 2615(a), for the assessment of a civil penalty. The complainant
20 is Region 10, United States Environmental Protection Agency (hereinafter
21 "EPA"). Complainant has reason to believe that the above-named respondent
22 has violated federal regulations addressing the use and/or disposal of
23 polychlorinated biphenyls (PCBs) (40 C.F.R. Part 761 promulgated under
24 Section 6 of TSCA), and thereby has violated Section 15 of TSCA, 15 U.S.C.
25 § 2614.
26
27
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1 II.

2 FINDINGS AND VIOLATIONS

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4 2. On August 4, 1988, an EPA inspection was performed at
5 S.J. Nudelman and Son, Inc., 2707 N.W. Nela Street, Portland Oregon. The
6 purpose of the inspection was to determine compliance with the TSCA,
7 15 U.S.C. § 2601, et seq., and specifically the PCB regulations pursuant to
8 40 C.F.R. Part 761. The inspection disclosed the following violations:

9
10 VIOLATION ONE

11
12 3. REGULATION - DISPOSAL - 40 C.F.R. § 761.60(d)(1) and (2)
13 states that: (1) spills and other uncontrolled discharges of PCBs at
14 concentrations of 50 ppm or greater constitute the disposal of PCBs; and (2)
15 PCBs resulting from the cleanup and removal of spills, leaks, or other
16 uncontrolled discharges must be stored and disposed of in accordance with 40
17 C.F.R. § 761.60(a). Disposal of PCBs in any other manner constitutes the
18 improper disposal of PCBs.

19
20 4. REQUIREMENT: If a transformer does not have a nameplate or
21 if there is no information available to indicate the type of dielectric fluid
22 in it, the transformer must be assumed to be a PCB Transformer unless it is
23 tested and found to contain less than 500 ppm. Refer to 44 Federal Register,
24 May 31, 1979, page 31517.

1 5. VIOLATION ONE: A transformer identified as General
2 Electric, serial number 6408310 Typek, 50,000 v 115/230, was leaking at the
3 time of the inspection. There was no indication what type of dielectric
4 fluid the transformer contained and it is assumed to be a PCB Transformer.
5

6 VIOLATION TWO
7

8 6. REGULATION - DISPOSAL: 40 C.F.R. § 761.60(a)(2)
9 states that mineral oil dielectric fluid from PCB-Contaminated Electrical
10 Equipment containing a PCB concentration of 50 ppm or greater, but less than
11 500 ppm, must be disposed of in one of the following:

12 (i) In an incinerator that complies with § 761.70.

13 (ii) In a chemical waste landfill that complies with § 761.75
14 if information is provided to the owner of the chemical
15 waste landfill that shows that the mineral oil dielectric
16 fluid does not exceed 500 ppm PCB and is not ignitable
17 waste as described in § 761.75(b)(8)(iii).

18 (iii) In a high efficiency boiler that complies with the
19 criteria contained in § 761.60(a)(2)(iii)(A).
20

21 7. REGULATION: 40 C.F.R. § 761.3 states that oil filled
22 electrical equipment other than circuit breakers, reclosers, and cable whose
23 PCB concentration is unknown must be assumed to be PCB-Contaminated
24 Electrical Equipment.
25
26
27
28

1 8. VIOLATION TWO: There were many electrical bushings on
2 site which came from capacitor potential transformers. The bushings ---
3 imputed PCB-Contaminated electrical equipment --- had been drained of the oil
4 in them. The oil, assumed to be PCB-Contaminated, was not disposed of in
5 accordance with 40 C.F.R. § 761.60(a).
6

7 VIOLATION THREE
8

9 9. REGULATION - STORAGE 40 C.F.R. § 761.65(b) requires that
10 any facility used for the storage of PCBs and PCB Items designated for
11 disposal have:

- 12 1) adequate walls and roof to prevent rainwater from reaching the
13 stored PCBs and PCB Items;
14 2) adequate floor constructed of continuous smooth and impervious
15 materials with a continuous curbing a minimum six inches high;
16 and
17 3) no drain valves, floor drains, or other openings that would
18 permit liquids to flow from the curbed area.
19

20 10. VIOLATION THREE: The area where the imputed PCB transformer
21 that is the subject of Violation One was stored did not meet the requirements
22 for a PCB storage for disposal area in that there were no walls and roof to
23 prevent rainwater from reaching the transformer, the floor was not
24 constructed of materials impervious to PCBs, and there was no continuous
25 curbing providing secondary containment.
26
27
28

1 VIOLATIONS FOUR AND FIVE

2
3 11. REGULATION - MARKING: 40 C.F.R. § 761.40 requires that all
4 PCB Containers, PCB Transformers, Large PCB Capacitors, and PCB storage for
5 disposal areas be marked in accordance with 40 C.F.R. § 761.45. In general,
6 a 6 inch by 6 inch PCB label is required, although the label may be reduced
7 in size proportionately to a minimum of 2 inches by 2 inches for equipment
8 too small to accommodate the standard 6 inch by 6 inch label.

9
10 12. VIOLATION FOUR: The imputed PCB transformer that is the
11 subject of Violation One was not marked with the required PCB label at the
12 time of the inspection.

13
14 13. VIOLATION FIVE: The area where the imputed PCB
15 Transformer that is the subject of Violation One was stored was not marked
16 with the required PCB label at the time of the inspection.

17
18 VIOLATION SIX

19
20 14. REGULATION - RECORDS & MONITORING: 40 C.F.R. § 761.180(a)
21 requires that, beginning July 2, 1978, facilities using or storing at one
22 time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB
23 Container(s), or one or more PCB Transformers, or 50 or more PCB Large High
24 or Low Voltage Capacitors, develop and maintain records on the disposition of
25 the PCBs and PCB Items. The records shall form the basis of an annual
26 document prepared by July 1, covering the previous calendar year.

1 15. VIOLATION SIX: The facility failed to prepare and maintain annual
2 reports on the disposition of PCBs and PCB Items.

3
4 III.

5 PROPOSED CIVIL PENALTY

6
7 16. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations
8 promulgated thereunder, 40 C.F.R. § 761, et seq., authorize a civil penalty
9 of up to \$25,000.00 per day for each violation of TSCA. Based on the facts
10 given in Section II above, the nature, circumstances, extent and gravity of
11 the above-cited violations, and degree of culpability, the following
12 penalties are hereby proposed:

	<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
13			
14	1. 40 C.F.R. § 761.60(d)(1) & (a)	Disposal	\$ 5,000
15	2. 40 C.F.R. § 761.60(a)(2)	Disposal	\$ 5,000
16	3. 40 C.F.R. § 761.65(b)	Storage	\$ 1,500
17	4. 40 C.F.R. § 761.40	Marking	\$ 1,500
18	5. 40 C.F.R. § 761.40	Marking	\$ 0*
19	6. 40 C.F.R. § 761.180(a)	Records	\$ 1,000 \$14,000

20 *Same type, same location as Violation 4

21 17. Payment of such penalty shall be by check made payable to the
22 United States Treasurer, remitted to the following:

23
24 Environmental Protection Agency, Region 10
25 (Regional Hearing Clerk)
26 P.O. Box 360903M
27 Pittsburgh, Pennsylvania 15251

1
2 with a copy sent to:

3 Regional Hearing Clerk
4 Office of Regional Counsel
5 Environmental Protection Agency
6 1200 Sixth Avenue, S0-125
7 Seattle, Washington 98101

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9 ISSUED AT SEATTLE this 4th day of November, 1988.
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12 
13 KENNETH D. FEIGNER, Chief
14 Pesticides and Toxic Substances Branch
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